

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MARGARET BAUMGARNER,

3:12-cv-01174-BR

Plaintiff,

ORDER

v.

COMMUNITY SERVICES, INC.,

Defendant.

CARL LEE POST

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BROWN, Judge.

On February 26, 2013, the Court heard argument on Defendant's Motion (#23) to Compel. For the reasons stated on the record, the Court makes the following Order Compelling Discovery:

1. The Court declines to award any sanctions against Plaintiff or her counsel because the current record does not reflect any deliberate failure on their part to comply with the Court's prior discovery Order (#21). The Court fashions this Order to make clear the continuing joint responsibility of Plaintiff and her counsel to exercise due diligence to identify and to produce promptly any remaining material responsive to the requests that are the subject of this Order and to certify to the Court and counsel as noted herein that full discovery has, in fact, been provided. All discovery ordered herein shall be produced **no later than March 29, 2013.**

2. With respect to Defendant's Request for Production No. 13, the Court concludes records related to Plaintiff's second pregnancy are responsive to the request, are not irrelevant, and should already have been produced. The fact that Defendant's counsel discovered inadvertently and through counsel's independent efforts that Plaintiff had a second pregnancy (that is, that Plaintiff did not produce such records on her own in response to Request No. 13) makes clear there has not been a

sufficient discovery response regarding Plaintiff's medical records. Although the Court respects the general argument that there may be privacy issues that justify not disclosing certain medical records in a civil case such as this one, the Court overrules Plaintiff's general objections that records from all medical and mental-health providers from January 2010 to the present is an overbroad request and is not likely to lead to the discovery of admissible evidence. In particular, because Plaintiff contends she should recover in this action damages equal to the earnings that she would have received from Defendant to the present, she has put her ability to work at issue and it is reasonable for Defendant to take discovery about medical records and mental-health treatments, if any, that may provide alternative explanations as to why Plaintiff is not earning the amounts claimed in the period since she gave birth to her twins.

Accordingly, the Court compels Plaintiff to produce:

(a) documents that cumulatively identify all medical and mental-health providers who have treated her from January 2010 to the present or, at Plaintiff's option, (b) a list of such providers and their addresses. After Defendant has the list of providers, Defendant may subpoena Plaintiff's complete records from January 2010 to the present for production at the offices of Plaintiff's counsel. Upon receipt of the subpoenaed records, Plaintiff's counsel shall Bates-stamp each page thereof and produce to

Defendant's counsel within seven (7) days a complete copy of each record and redacting only material that Plaintiff's counsel contends is privileged or otherwise nondiscoverable. As to any such redacted material, Plaintiff's counsel shall (a) simultaneously produce to Defendant's counsel a privilege log identifying the pages withheld and (b) produce the withheld documents to the Court for *in camera* review.

3. The Court authorizes Defendant to prepare for submission to the Court after review by Plaintiff's counsel a form of Order directed to Facebook to produce to Plaintiff's counsel the entirety of Plaintiff's Facebook profile from March 1, 2010, to the present. On receipt of the profile, Plaintiff's counsel shall review it to identify any material responsive to Paragraph 1 and its subparts in the Court's Order (#21) compelling discovery. If responsive material is found, Plaintiff's counsel shall produce it. Within seven(7) days of receiving the profile, Plaintiff's counsel shall also file in the record his certification that all responsive material from this search has been produced. If counsel is uncertain as to whether a matter in the profile is responsive, he may submit the issue to the Court for an *in camera* determination.

4. With respect to whether Plaintiff has made a complete production of emails responsive to Paragraph 1 and its subparts of the Court's Order (#21), the Court directs Plaintiff's counsel

to confirm a diligent search has been made and that all responsive material has been produced to Defendant related to this issue and to file in the record of this matter counsel's certification that all responsive emails have been produced.

5. With respect to whether Plaintiff has produced all records concerning her employment since September 2010 and the reasons why Plaintiff may no longer be working with any employer since September 2010, the Court declines to make a discovery order until Defendant has deposed Plaintiff and has a basis to assert that Plaintiff has withheld discovery on this issue.

6. With respect to Defendant's discovery request for documentation of Plaintiff's earnings since September 2010, the Court orders Plaintiff's counsel to ensure the following has been produced to Defendant: (1) all of Plaintiff's W-2 and Forms 1099 reflecting Plaintiff's income for services in 2010, 2011, and 2012, and (2) documentation of any other wages, salaries, or earnings or other value received in exchange for Plaintiff's services from September 2010 to the present.

IT IS SO ORDERED.

DATED this 27th day of February, 2013.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge